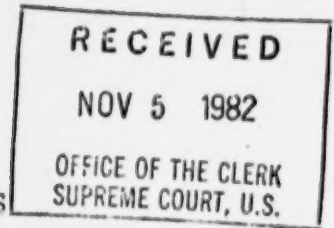


CASE NO. 82-5519
IN THE
SUPREME COURT OF THE UNITED STATES



FLOYD MORGAN,
PETITIONER,
-VS
STATE OF FLORIDA,
RESPONDENT.

A P P E N D I X

JIM SMITH
ATTORNEY GENERAL

RAYMOND L. MARKY
ASSISTANT ATTORNEY GENERAL
1502 THE CAPITOL
TALLAHASSEE, FL 32301
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COUNSEL FOR RESPONDENT

10/

P R O C E E D I N G S

9:30 o'clock a.m.
June 15, 1978

* * *

(Thereupon, at 9:30 o'clock a.m., Thursday, June 15, 1978, court reconvened pursuant to adjournment of the preceding session, and the following further proceedings were had:)

THE COURT: Mr. Bailiff, call court to order.

THE BAILIFF: Court will come to order.

THE COURT: Ladies and gentlemen of the jury, you have found the defendant, Floyd Morgan, guilty of murder in the first degree of Joe Edward Saylor, as charged in the Indictment in Case No. 77-141-CF.

The punishment for this crime is either death or life imprisonment. The final decision, as to what punishment shall be imposed, rests solely with the judge of this court. However, the law requires that you, the jury, render to the Court an advisory sentence as to what punishment should be imposed upon the defendant.

The State and the defense may now present evidence relative to what sentence you should recommend to the Court.

You are instructed that this evidence, when

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1 considered with the evidence you have already
2 heard, is presented in order that you might deter-
3 mine first, whether or not sufficient aggravating
4 circumstances exist which should justify the imposi-
5 tion of the death penalty and, second, whether
6 there are mitigating circumstances sufficient to
7 outweigh the aggravating circumstances, if any.

8 At the conclusion you will be instructed on
9 the factors in aggravation and mitigation you may
10 consider.

11 The State may proceed.

12 MR. SALMON: Your Honor, may we approach the
13 bench?

14 THE COURT: You may.

15 (Discussion at the bench.)

16 THE COURT: Ladies and gentlemen of the jury,
17 before proceeding with the presentation of addi-
18 tional matters, it is necessary that the Court hear
19 and determine certain matters of law which will be
20 considered out of your presence before we can pro-
21 ceed further.

22 Therefore, I ask that you withdraw for a few
23 moments to the jury room while these matters are
24 taken care of.

25 THE BAILIFF: Ladies and gentlemen, just come

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1 this way.

2 (Thereupon, the jury retired to the jury room
3 and the following further proceedings were had out
4 of the presence of the jury:)

5 THE COURT: All right. You may state your
6 motion, Mr. Cervone -- I am sorry, Mr. Salmon.

7 MR. SALMON: Thank you, Your Honor.

8 At this time, Your Honor, I would make a
9 motion in limine with respect to restricting items
10 that I think are reasonably anticipated that the
11 state attorney might attempt to introduce into
12 evidence at this time.

13 With respect to aggravating circumstances, as
14 enumerated in Florida Statute 921.141, the first
15 listed aggravating circumstances of capital felony
16 was committed by a person under sentence of im-
17 prisonment, and I would move at this time that
18 that be restricted from evidence, in this case,
19 based on the denial of equal protection and also
20 due process grounds.

21 In support of that, I would submit to the
22 Court that there is no rational distinction for
23 counting this as an aggravating circumstance in
24 a situation where, for example, a person might be
25 imprisoned for the crime of worthless checks or

1 even something minor as contempt of court, and a
2 person on the street who commits murder.

3 Also, the converse for a person on the street
4 may have a long and violent past record but, for
5 some reason, is, in fact, on the street.

6 I would submit to the Court that there is not
7 a rational distinction in counting this as an
8 aggravating circumstance. If, as I understand the
9 aggravating circumstance to be, would be calling
10 for a person who is incarcerated to allow the jury
11 to imply and infer from that that there is some
12 note of aggravation with respect to the present
13 crime.

14 For those reasons, I would submit that it is
15 unconstitutional and would move that it be stricken
16 from evidence in this case.

17 With respect to No. "B", the defendant was
18 previously convicted of another capital felony or
19 of a felony involving the use or threat of violence
20 to the person, I would submit that that cannot be
21 introduced, the earlier conviction of Mr. Morgan
22 cannot be introduced, in this case, as it was,
23 first of all, a conviction not for a capital felony,
24 and also based on the case of Provence v. State, a
25 Supreme Court of Florida case, which is cited at

1 337 So.2d 783, where the Supreme Court of Florida,
2 I would submit, interpreted Item "B" as not being
3 in the disjunctive, but rather and I quote, Sub-
4 section "B" reads:

5 "The defendant was previously convicted of
6 another capital felony involving the use or threat
7 of violence to the person."

8 There is no indication there that the Supreme
9 Court of Florida has interpreted that as an aggra-
10 vating circumstance which might include an offense
11 separate from a capital felony, which is one of
12 violence.

13 With respect to letter "H", I would submit
14 that the state attorney should not be allowed to
15 present testimony or evidence to the jury, in this
16 case, that this was a capital felony that was
17 especially heinous, atrocious, or cruel.

18 I would submit to the Court, that both the
19 Legislature and the Supreme Court of Florida, have,
20 in fact, defined those terms as to what they con-
21 template being admitted in the penalty phase of
22 a first degree murder trial.

23 I would like to cite to the Court the case of
24 Tedder v. State, 322 So.2d 908.

25 I do not have a copy of that case but I would

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1 like to read from the supplement from the Florida
2 Statutes Annotated and therein the quote is:

3 "That the Legislature intended something
4 especially heinous, atrocious, or cruel when it
5 authorized the death penalty for first degree mur-
6 der."

7 Further, I would --

8 THE COURT: Wouldn't that be a jury question,
9 Mr. Salmon?

10 MR. SALMON: Your Honor, I think that cer-
11 tainly that is a possibility of this Court's ruling.

12 I would submit, and I have just a couple of
13 other cases that I would like to submit, that
14 they have gone further in this case. The facts
15 are such that this Court can place them within
16 earlier Supreme Court decisions defining the terms
17 "heinous, atrocious and cruel."

18 Again, in *Provence v. State*, we have a crime
19 that is quite similar, in fact, very similar where-
20 in knife wounds, accumulating a number of eight,
21 were determined not to be heinous, atrocious or
22 cruel, and an earlier death sentence was overturned
23 by the Supreme Court of Florida and required imposi-
24 tion of the life sentence.

25 In the case of *Alford v. State*, again a

E 006

1 Supreme Court case, cited at 307 So.2d 433, the
2 Supreme Court defined the term "heinous," as used
3 in this section in defining aggravating circum-
4 stances authorizing the death penalty, those that
5 are extremely wicked, shockingly evil.

6 The term "atrocious," as used in this section
7 setting forth aggravating circumstances would only
8 authorize the death penalty in those cases where
9 the means used were outrageously wicked and vile.

10 The term "cruel," as used in this section
11 relating to aggravating circumstances, would be
12 those indicative of the situation where the means
13 used were designed to inflict a high degree of pain
14 with utter indifference or even enjoyment of suf-
15 fering of others.

16 Again, the case cited for facts, I think, that
17 are analogous to this case, in Cooper v. State,
18 336 So.2d 1133, the facts in that case were where
19 a policeman being murdered as a result of two shots
20 being fired directly into the officer's head. The
21 Supreme Court found that this was not especially
22 heinous.

23 Lastly, Your Honor, I would cite once again
24 from Cooper v. State, again cited at 332 So.2d 1133.
25 Therein, Your Honor, the Court contemplated the

F 007

1 circumstances justifying heinous, atrocious and
2 cruel as those that indicated an unnecessarily
3 torturous act being committed on the victim.

4 I think, Your Honor, that the Supreme Court
5 of the State of Florida has indicated clearly enough,
6 for this Court's purposes, to restrict the State
7 from presenting this particular crime as one that
8 heinous, atrocious, and cruel and would indicate
9 that it, in fact, does not fall within the terms
10 enumerated in Item "H" under 921.141.

11 THE COURT: How can I exclude that from the
12 consideration of the jury, Mr. Salmon, when they
13 have already heard the testimony from which, I
14 assume, that the State would ask that that infer-
15 ence be drawn?

16 MR. SALMON: I agree, Your Honor.

17 The jury instructions, on the death penalty
18 phase, I think, in fact, covers that, at least
19 impliedly where it says what they may include.

20 If I can find the language, Your Honor, it is
21 to the effect that they may, indeed, consider the
22 facts heard during the guilt phase of the trial.
23 They will have that within their consideration.

24 I think, though, there is a distinction be-
25 allowing
tween/the jury to consider that during the penalty

2 008

1 phase if they should, in fact, do so.

2 I would analogize it to a jury instruction
3 wherein one party or the other may get something
4 more restrictive or more limited than is actually
5 laid out in the providing statute, but that it can-
6 not be iterated as specified in the statute, and
7 I think that, although if they decide to consider
8 that as they are deliberating on the penalty phase
9 of this trial, and they should come up with that,
10 they should decide that the facts that they heard,
11 during the guilt phase of this trial, were some-
12 thing that weighed in favor of imposing the death
13 penalty, and they certainly can do that.

14 I would submit, Your Honor, that they cannot
15 be instructed to them -- no, I should not say that.
16 I think that they can be instructed to them but I
17 don't think that Mr. Cervone can offer argument on
18 it, Your Honor, at this stage.

19 The last thing that I would and, again, I am
20 merely anticipating what the State might do on the
21 argument to the jury, is that if I should make
22 argument on one of the mitigating circumstances,
23 that Mr. Cervone be limited and not be allowed to
24 turn any mitigating circumstance, that he disagrees
25 with, into an aggravating circumstance.

E 009

1 I understand that he can argue that it is not
2 a mitigating circumstance, but I would ask that he
3 be restricted from then suggesting to the jury that,
4 if it is not a mitigating circumstance, that it
5 then becomes an aggravating circumstance.

6 That is all that I would have with respect
7 to the aggravating circumstances presented by the
8 State.

9 THE COURT: All right. Mr. Cervone.

10 MR. CERVONE: Your Honor, I would, again,
11 first of all, by noting that the constitutionality
12 of the statute that we are dealing with has been
13 upheld by the Supreme Court of the state in numer-
14 ous cases, including the Alford case which Mr.
15 Salmon has, in fact, cited to the Court.

16 Secondly, I would state that, in my estimate
17 the imposition of imprisonment as an aggravating
18 circumstance is, indeed, one which is based on
19 rational distinctions in that the manner of life-
20 style, the degree of freedom, the mobility, the
21 degree of supervision, the inherent rehabilitative
22 efforts being applied to any prisoner do put him
23 in a distinguishable class from any other person
24 and that his behavior, while under that structured
25 system, is, therefore, a distinguishable type of

E. 010

1 behavior.

2 As to the Provence case, if the Court will
3 carefully read that case, it will find that the
4 Supreme Court, in stating the use of the word
5 "conviction," emphasized the word "convictions",
6 and that was done so that the court might point
7 out to the trial court, in that case, had improperly
8 considered prior arrests and not convictions
9 in reaching its judgment.

10 As to whether or not the State should be
11 allowed to argue the final aggravating circumstances
12 of heinous, atrocious, or cruel, the question is
13 one for the jury to consider. The evidence, upon
14 which they may consider, is, in fact, already before
15 them, and I find there to be no logic in asking
16 the Court to restrict the State from arguing
17 that when they have, in fact, heard the testimony
18 already and where it is apparently conceded that
19 the instructions, which the Court will give on
20 whether or not they should consider that testimony
21 to show that crimes had been heinous, atrocious, or
22 cruel has been conceded.

23 As to Mr. Salmon's last point, I don't believe
24 I follow it at all. I think it is imminently
25 proper for the State, in argument to the jury, to

E. 011

1 argue to the jury the existence of all factors,
2 whether they be mitigating or aggravating.

3 THE COURT: All right, sir.

4 MR. SALMON: Your Honor, I would just like to
5 make one comment to Mr. Cervone's last point.

6 What I am suggesting there is that, in my
7 reading of the case law, it indicates that argument
8 on aggravating circumstances is strictly limited,
9 that it cannot go beyond the enumerated aggravating
10 circumstances in the statute.

11 All I am suggesting is that he not be allowed,
12 in his argument, to turn the lack of a mitigating
13 circumstance into an enumerated aggravating circum-
14 stance.

15 MR. CERVONE: I understand that, but I think
16 that the State must be allowed to comment on
17 whether or not certain mitigating circumstances do
18 exist.

19 For example, I think it is proper for the
20 State to comment, as to the first mitigating cir-
21 cumstance, that the defendant definitely does have
22 a significant prior criminal history.

23 THE COURT: All right. The motions are each
24 denied.

25 MR. SALMON: Your Honor, I have one further

E-012

1 motion to make with respect to all of the aggra-
2 vating and mitigating circumstances, essentially
3 going to whether or not they should be argued at
4 all.

5 I would argue that they are unconstitutional
6 on the grounds that they are vague and overbroad
7 in that they do not adequately define, to the jury,
8 what it is they are to consider as aggravating cir-
9 cumstances and mitigating circumstances and how
10 they may overlap, which I would argue to the Court
11 is impermissible under the law.

12 THE COURT: Hasn't that issue already been
13 settled by both the Florida Supreme Court and the
14 United States Supreme Court, Mr. Salmon?

15 MR. SALMON: It was my understanding, Your
16 Honor, that it had but, when I looked last night,
17 I could not find it and I felt that at least it
18 would be advisable for me to make it here today.

19 THE COURT: All right, sir. Does the State
20 wish to respond, Mr. Cervone?

21 MR. CERVONE: Your Honor, I think it has,
22 indeed, been resolved contrary to the defendant's
23 position and I would ask the Court to deny that
24 motion.

25 THE COURT: That is my understanding, Mr.

1 Salmon.

2 The motion is denied.

3 MR. SALMON: The last thing that I would re-
4 quest, Your Honor, I would move to be allowed to
5 offer any and all mitigating circumstances that I
6 might choose to argue to the jury in consideration
7 of the penalty that they might advise on to the
8 Court in this case.

9 I think that the case law, both at the --
10 well, certainly at the Supreme Court level of the
11 United States in Gregg v. U.S., at 96 -- I don't
12 have the U.S. cite, 96 Supreme Court 2909, 49 Law
13 Ed.2d 859.

14 What I would like to do, Your Honor, if I
15 may be allowed to is to state what I feel is the
16 essential holdings of the Gregg case with respect
17 to the flexible assessment of mitigating circum-
18 stances.

19 I would submit to the Court that the United
20 States Supreme Court in Gregg did, in fact, empha-
21 size the need for allowing complete, total flexi-
22 bility in presentation of circumstances, whatever
23 they might be, that the jury might find helpful in
24 determining whether or not there are mitigating
25 circumstances against imposition of the death

E. 014

1 penalty.

2 THE COURT: Wouldn't I have to do the same
3 thing then with respect to aggravating circum-
4 stances?

5 MR. SALMON: I think, Your Honor, that, again,
6 the case law, in both Gregg and I believe that there
7 is also a Florida cite, is precisely to the con-
8 trary, that, in fact, the case law indicates that
9 comment on the aggravating circumstances must be
10 specifically, minutely limited to those enumerated
11 in the statute, the distinction being because of
12 the gravity of the penalty which might be imposed
13 in a first degree murder case.

14 They have said that, although aggravating
15 circumstances must be strictly limited, the jury,
16 in determining such a grave penalty, should have
17 everything possible, whatever they might reflect
18 on mitigative in determining their advisory sen-
19 tence.

20 I would suggest to the Court that, the lan-
21 guage in Gregg, holds that --

22 THE COURT: Are you suggesting that the Court
23 should just give you carte blanche to come in here
24 and present to that jury or say to that jury any-
25 thing you choose to say?

E. 015

1 MR. SALMON: Not anything that I choose to
2 say, Your Honor.

3 As we have stipulated, primarily what I would
4 have to offer would be items that are recorded in
5 Mr. Morgan's master file, which have been stipu-
6 lated to both by myself and Mr. Cervone, as allow-
7 able to be read without any further substantiation
8 as evidence pending the Court's ruling on whether
9 or not it would allow certain of those matters.

10 THE COURT: Would you disclose to me the
11 nature of it, Mr. Salmon?

12 MR. SALMON: Yes, Your Honor. As I mentioned
13 yesterday, I would like to present to the Court
14 the matters that I feel would present to the jury
15 information that would, in fact, cause them to
16 believe that this is not a person that ought to be
17 subjected to the death penalty in this case, mat-
18 ters of the probability and, indeed, very good
19 possibility of his rehabilitation, a letter of
20 commendation from the Governor of the State of
21 Florida wherein, Your Honor, it is acknowledged
22 that Mr. Morgan had, at extreme risk to his own
23 life and safety, in fact, saved the lives of many
24 employees of the Florida State Prison during the
25 commonly known as the garment factory riots back

1 in the early seventies.

2 I would like to present to them the fact that
3 this is not a man who simply laid fallow in the
4 prison system during the course of his incarceration,
5 but rather is a person who has taken very
6 full advantage of the rehabilitation, educational
7 constructive aspects of prison life, both with
8 respect to educational possibilities and completing
9 his GED, many, many vocational courses that were
10 completed, the fact that, pursuing his education
11 into the Lake City Community College area, that
12 the recommendations of the classification teams
13 are consistent that his confinement status be reduced
14 and, in fact, at one point being reduced to
15 minimum.

16 Essentially, Your Honor, matters such as that,
17 the things that I feel that they ought to consider
18 in determining whether or not this is a person
19 that is totally absent of work and whose life
20 should be snuffed out, or rather whether or not
21 the indications aren't that, with the proper
22 therapy, and I would also read from the psychological
23 report indicating that if, the intense psycho-
24 therapy that had been recommended in Mr. Morgan's
25 case back in 1975, had, in fact, been implemented,

E. 017

1 that the chances would be excellent that this
2 offense would never have happened.

3 THE COURT: All right, sir. Mr. Cervone.

4 MR. CERVONE: Your Honor, I would agree that
5 the Court should give counsel broad latitude in
6 presenting factors under the enumerated mitigating
7 circumstances.

8 However, the materials which he wishes to
9 present cannot be placed under any of these statu-
10 torily mitigating circumstances.

11 It is my position that they are irrelevant
12 and not admissible before this jury. The very pur-
13 pose of the statute, being enacted, was to closely
14 limit the types of materials of aggravating and
15 mitigating that can be presented so that the jury
16 will not wantonly return verdicts of death or life
17 without having some sort of guideline upon which
18 to base those verdicts.

19 THE COURT: Mr. Salmon, do all of the material
20 to which you refer relate to matters that have
21 transpired since Mr. Morgan entered the prison
22 system?

23 MR. SALMON: That is correct, Your Honor.

24 THE COURT: Upon reflection, the statute, I
25 believe the first aggravating circumstance -- the

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1 first aggravating circumstance enumerated in the
2 statute is that the crime, for which a defendant is
3 to be sentenced, was committed while the defendant
4 was under a sentence of imprisonment. Now, that
5 is an aggravating circumstance if it is established.

6 Does not the defendant have the right to
7 speak to that and say, "Yes, indeed, I was under
8 a sentence at the time I committed this offense,
9 but in considering the fact that I was under com-
10 mitment, and weighing that aggravating circumstance,
11 the jury should also have the benefit of these
12 things."

13 Would that not be a fair assessment of it?

14 MR. CERVONE: I would have no opposition to
15 that, Your Honor.

16 THE COURT: I am going to permit it, I am
17 going to grant the motion, Mr. Salmon, and allow
18 you to place, before the jury, in accordance with
19 the stipulation here, any matters that are docu-
20 mented from the prison file of the defendant.

21 MR. SALMON: Thank you very much, Your Honor.

22 I wonder if I might ask Mr. Cervone if he,
23 after having read Dr. McMahon's partial report,
24 would allow reading of that, also?

25 MR. CERVONE: I have no objection to that.

2 019

1 THE COURT: All right, sir.

2 MR. SALMON: Thank you.

3 THE COURT: Anything further, gentlemen?

4 MR. SALMON: That is all that I have, Your
5 Honor.

6 MR. CERVONE: No, Your Honor.

7 THE COURT: Very well. Bring the jury in,
8 Mr. Bailiff.

9 (Thereupon, the jury returned to the court-
10 room, was seated in the box, and the following
11 further proceedings were had in the presence of
12 the jury:)

13 THE COURT: You may proceed, Mr. Cervone.

14 MR. CERVONE: Your Honor, pursuant to the
15 stipulation tendered to the Court yesterday after-
16 noon, at this time I have three documents removed
17 from the official files of the Department of
18 Offender Rehabilitation, which I would tender to
19 the Court and ask that they be accepted into evi-
20 dence as State's Exhibits 14, 15 and 16.

21 THE COURT: Does the defendant wish to be
22 heard with respect to the admissibility of these
23 three documents?

24 MR. SALMON: No, Your Honor.

25 THE COURT: Very well. The documents referred

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1 to by Mr. Carvone are received in evidence as the
2 State's exhibits, whatever the next numbered ex-
3 hibits will be, and will be appropriately marked
4 by the clerk.

5 (The documents last above referred to
6 were received in evidence as State's
Exhibits Nos. 14, 15, and 16.)

7 MR. CERVONE: With the Court's permission,
8 and also pursuant to the stipulation, may I pub-
9 lish these by reading them to the jury?

10 THE COURT: You may, sir.

11 MR. CERVONE: "In the Circuit Court --"

12 MR. SALMON: Your Honor, at this time I would
13 say that my understanding, at this stage of the
14 proceeding, is that Mr. Cervone may make mention
15 to the jury of the items that he feels will be
16 substantiated by argument on the issue of aggra-
17 vating circumstances but now is not the time to
18 submit those aggravating circumstances.

19 THE COURT: I don't understand what you mean,
20 Mr. Salmon.

21 MR. SALMON: Your Honor, I will try to explain.

22 It is my understanding, under the procedure,
23 at this stage of the trial that there will actually
24 be four appearances, one by Mr. Cervone to enumer-
25 ate to the jury the aggravating circumstances that

E. C21

1 he feels will be shown by argument and by further
2 evidence or testimony, and that I would then have
3 an opportunity to relate to the jury what I feel,
4 in the area of mitigating circumstances, would be
5 presented to the jury during argument and/or in
6 the presentation of testimony.

7 THE COURT: In other words, are you saying or
8 are you suggesting that counsel be allowed to make
9 opening statements, Mr. Cervone, excuse me, Mr.
10 Salmon?

11 MR. SALMON: Yes, that is what I am suggesting,
12 Your Honor.

13 THE COURT: Well, I will give counsel leave
14 to do that if he wishes to but I can't compel coun-
15 sel to make opening statements. I can't compel
16 the State to make one or compel you to make one.

17 MR. CERVONE: Your Honor, I don't think that
18 the statute contemplates that. I think that it
19 contemplates only the introduction of evidence and
20 then have closing argument, thereon.

21 THE COURT: That is the way that they have
22 always been conducted in this division, Mr. Salmon.

23 MR. SALMON: Very well.

24 MR. CERVONE: May I proceed?

25 THE COURT: You may proceed, Mr. Cervone.

E 022

1 MR. CERVONE: Thank you, Your Honor.

2 Exhibit 16: "In the Circuit Court of the
3 Thirteenth Judicial Circuit in and for Hillsborough
4 County, State of Florida, the 9th day of June,
5 1970.

6 "State of Florida versus Floyd Morgan.

7 "In the name and by the authority of the
8 State of Florida, the grand jurors of the County
9 of Hillsborough, State of Florida, charge that
10 Floyd Morgan, on the 26th day of May, 1970, in the
11 county and state aforesaid, from a premeditated
12 design to effect the death of James Louis Webb,
13 did murder the said James Louis Webb by puncturing
14 his body with a piece of wood, a further descrip-
15 tion which is to the grand jurors unknown, thereby
16 inflicting wounds in and upon the body of the said
17 James Louis Webb.

18 "As a result of said wounds, the said James
19 Louis Webb did die, contrary to the form of the
20 statute subcases made and provided, to-wit:
21 Florida Statute 782.04.

22 "Indictment for first degree murder, a true
23 bill."

24 It is signed by the foreman of the grand jury.

25 Exhibit 15: "In the Circuit Court of the

EL 023

Thirteenth Judicial Circuit, in and for Hillsborough County, State of Florida.

"State of Florida, plaintiff, versus Floyd Morgan, defendant.

"Judgment: You, Floyd Morgan, being now before the Court, attended by your attorney, John S. Burton, Esquire, and you having entered your plea of nolo contendere to the charge of murder in the first degree, the Court adjudges that you are guilty of the crime of second degree murder.

"Done and adjudged in open court at Tampa, Hillsborough County, Florida, this, the 9th day of March, 1971."

It is signed by the Circuit Court judge.

Exhibit 14: "In the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County, State of Florida.

"State of Florida versus Floyd Morgan.

"Sentence: You, Floyd Morgan, the defendant, having entered a plea of nolo contendere to the charge of murder in the first degree, the Court adjudges you to be guilty of the crime of second degree murder.

"Have you anything to say why sentence should not now be pronounced upon you?

E. 024

1 "You, Floyd Morgan, the defendant, having said
2 nothing to preclude the entry of this sentence, it
3 is the judgment and sentence of this Court that
4 you, Floyd Morgan, for your said crime of second
5 degree murder, be taken by the sheriff or his law-
6 ful deputy to the state prison at Raiford, Florida,
7 and delivered to the principal keeper thereof and
8 there be confined in said state prison at hard
9 labor for a period of 30 years.

10 "Ordered in open court at Tampa, Hillsborough
11 County, Florida, this 9th day of March, 1971."

12 It is signed by the Circuit Court judge.

13 Your Honor, the State has nothing further to
14 present.

15 THE COURT: You may proceed, Mr. Salmon.

16 MR. SALMON: Pursuant to that same stipula-
17 tion, I would ask that certain items from that same
18 file be marked and introduced as defense exhibits
19 in evidence.

20 There are several of them, I have not counted
21 them, I would have to go through them one by one,
22 if that would be allowed by the Court, and then we
23 could number them as we go along or perhaps we
24 could mark them as a composite exhibit.

25 Then, Your Honor, the second exhibit that I

26 025

1 would like to have introduced into evidence is a
2 letter from Dr. Elizabeth A. McMahon, again pur-
3 suant to the stipulation of myself and the State,
4 as to its admissibility.

5 MR. CERVONE: That is correct, Your Honor.

6 THE COURT: The letter of Dr. Elizabeth A.
7 McMahon, tendered by the defendant, will be re-
8 ceived in evidence as Defendant's Exhibit No. 1.

9 MR. SALMON: That would be correct, Your
10 Honor.

11 (The document last above referred
12 to was received in evidence as
Defendant's Exhibit No. 1.)

13 THE COURT: You may publish the letter to the
14 jury, Mr. Salmon.

15 MR. SALMON: Thank you, Your Honor.

16 THE COURT: Mr. Salmon, I think what you are
17 going to need perhaps is copies. I believe that
18 you have the DOR file before you and you will not
19 be able to remove them and file them with the
20 court.

21 MR. SALMON: I think that we will need to
22 make copies.

23 THE COURT: Do you propose to go through them
24 one at a time and read them to the jury or do you
25 propose to tender copies for them to peruse,

1 themselves?

2 MR. SALMON: I think, for my purpose, Your
3 Honor, it would be sufficient for me to read from
4 them without necessitating copies being made of
5 each one for their perusal.

6 If I might do that through, again, the stipu-
7 lation but without introducing them into evidence,
8 perhaps it would not be necessary to make copies
9 for the file unless the Court would so desire.

10 THE COURT: I would like anything that is
11 considered by the jury to be made a part of the
12 record.

13 MR. SALMON: It will not be necessary to have
14 them provided for the jury, Your Honor.

15 THE COURT: All right, sir.

16 MR. SALMON: I think, for my purposes, Your
17 Honor, it will be sufficient for me to read from
18 them and allow me to have them rely on their own
19 memory.

20 THE COURT: Well, after the proceedings have
21 been completed, and while the jury is in delibera-
22 tions, collaborate with the clerk in preparation
23 of copies of those and mark them into evidence as
24 appropriate exhibits.

25 MR. SALMON: Thank you.

L. 027

1 THE COURT: You may proceed, sir.

2 MR. SALMON: Thank you, Your Honor.

3 Your Honor, actually, the same would apply
4 with respect to this letter.

5 "Confidential material.

6 "Floyd J. Morgan is a 31-year-old white single
7 male who is evaluated at the Florida State Prison
8 on June the 7th, 1978, at the request of his attor-
9 ney, Mr. William Salmon.

10 "In addition to an extensive diagnostic inter-
11 view, the following tests were administered:

12 "The Wechsler Adult Intelligence Scale, a
13 neurophysiological test battery, Peabody picture
14 vocabulary test, the Minnesota Multiphasic Person-
15 ality Inventory, and the Rorsch. hand test, and
16 also projective drawings.

17 "Brief impression:

18 "Floyd Morgan is perhaps one of the few people
19 that prison seems to have helped in some ways, for
20 example, he finished his high school education and
21 took several college and automotive mechanics
22 courses. In fact, he has more definite goals now
23 than he did prior to his arrest in 1970.

24 "Furthermore, it seems to me he seems --"
25 excuse me. "Furthermore, he seems to have developed

E. 028

1 some degree of insight into his own dynamics.

2 "It is regretable that he could not have re-
3 ceived the extensive psychotherapy that was recom-
4 mended in February of 1975.

5 "With his intelligence and his capacity for
6 insight, he would most probably have benefitted
7 from therapy and possibly this most recent incident
8 might have been avoided."

9 I am sorry, I left out an initial paragraph.

10 "Floyd is currently functioning within the
11 average range of intelligence, and there is no evi-
12 dence of a major thought disorder nor a major
13 affect disturbance.

14 "Surprisingly, there is not the degree of
15 anger and hostility present in the test material
16 that is often found in individuals who have com-
17 mitted the type of crime for which he is charged."

18 A letter submitted to the Florida State Prison
19 by Mrs. Mary Jane Arnold, the defendant's mother:

20 "Floyd has had several head injuries. When
21 he was about 12 years old, he and the neighbor boy
22 were wrestling and the neighbor boy run his head
23 into the metal corner that projects from the plas-
24 ter in the archway, which injury got a pus sac in
25 it and it had to be taken care of by the doctor.

L. 029

1 "After he came out of the Army, he always com-
2 plained of a headache and always took aspirins.
3 He had a constant headache when he was in the Army
4 in Vietnam in November of 1968.

5 "After he came out of the Army, he was kicked
6 in the head by a pony and was in the hospital for
7 three days in August of 1969."

8 A request by Mr. Floyd Morgan to the -- with
9 respect to vocational training:

10 "I would like to ask your help in obtaining
11 for me an opportunity to enter into vocational
12 training in electronics or electricity.

13 "This is my primary interest and I have a
14 little background in it.

15 "Inasmuch as I am a veteran and have educa-
16 tional benefits due me, I could enroll in corres-
17 pondence courses to supplement the studies that I
18 could obtain here.

19 "Since I am in prison, it is my desire to use
20 this time to improve myself and learn a trade.

21 "I am willing to put forth the effort as I
22 stated and supplement it with my GI benefits."

23 It is signed Floyd Morgan.

24 A form entitled "Extra Gain Time Recommenda-
25 tion, May the 3rd, 1972."

E 030

1 I would state merely that that is, in fact,
2 what it is and that additional gain time was
3 awarded.

4 A letter to the Florida Division of Adult
5 Corrections from Alcoholics Anonymous.

6 "Subject: Morgan, Floyd.

7 "The Renaissance Group is proud to report
8 that the above-named subject has attended 24 of 26
9 Alcoholics Anonymous meetings during the past six
10 months.

11 "I believe that the above-named member of the
12 Renaissance Group is a better man for having at-
13 tended these meetings."

14 It is signed by Paul Colburn, cosponsor.

15 A Reclassification and Progress report, from
16 Florida State Prison to East Unit on 4/20/72.

17 "Subject has recently received an average work
18 and an above average quarter's report from his
19 supervisors.

20 "Subject does not cause any disciplinary prob-
21 lems. The team feels that the subject should be
22 the recipient of special counseling and probably
23 could benefit from all involvement in the group
24 treatment program when it could be made available
25 to him.

031

1 "Subject seems to be trying to take advantage
2 of the programs that are being offered to him here
3 at FSP by participating in the AA program, working
4 on his GED diploma, and taking correspondence
5 courses on the campus.

6 "In view of the above institutional prognosis
7 -- in view of the above, institutional prognosis is
8 good."

9 A Reclassification and Progress Report sub-
10 mitted to the Florida Division of Corrections,
11 3/5/1973.

12 "The subject was encouraged to participate in
13 the group therapy and continue his studies.

14 "He appeared to have one of the better atti-
15 tudes that I have interviewed in a long while and,
16 should he continue with this type of attitude and
17 work towards the goals that he has set for himself,
18 it is felt that he will use this period of incar-
19 ceration for self-improvement and rehabilitation
20 for the future."

21 A Certificate of Achievement.

22 "This is to certify that Floyd Morgan has
23 satisfactorily completed a course in improving
24 industrial, community, and personal relations."

25 It is signed by the educational supervisor,

E. 032

1 vocational coordinator, and instructor.

2 A Reclassification and Progress Report to
3 Union Correctional Institution dated the ninth
4 month of 1974.

5 "Subject currently has good reports in the
6 areas of work, quarters, religion, and from the
7 AA program.

8 "Institutional prognosis is, therefore, good."

9 A form entitled "Supplemental Team Decisions
10 and Recommendations to Union Correctional Institu-
11 tion."

12 "Subject has received no disciplinary reports
13 on this sentence. It is felt by this classifica-
14 tion team that subject can perform well in a medium
15 custody status.

16 "Subject is the editor of Alcoholics Anonymous
17 Newspaper, and if this custody classification is
18 granted, subject will be participating more in
19 this type of service.

20 "Subject has no escape history and is not con-
21 sidered to be an escape risk."

22 A psychological evaluation on Floyd J. Morgan
23 done February the 28th, 1975.

24 "Recommendations: Test results indicate that
25 Inmate Morgan has the intellectual and personality

4-033

1 potential to get in touch with his latent hostility
2 and work it out to the point of getting rid of it.

3 "He has been offered the opportunity to par-
4 ticipate in the program which currently consists
5 of studying psychological materials.

6 "Hopefully, time will be available in the
7 future to give him the individual psychotherapy
8 that will be needed to go along with this written
9 materials project.

10 "Possibly, after intensive therapy, he would
11 not be a menace to society upon release."

12 A Certificate of Achievement.

13 "This is to certify that Floyd Morgan has
14 satisfactorily completed a vocational course in
15 basic automotive mechanics."

16 A letter to Union Correctional Institution
17 from the Hope Group.

18 "Reference: Floyd J. Morgan.

19 "To whom it may concern:

20 "Be advised the above-named inmate, a member
21 of the Alcoholics Anonymous Hope Group at Union
22 Correctional Institution, is in good standing and
23 has attended outside AA, has attended speaking
24 meetings and taken an active interest and partici-
25 pated in the program.

2 034

"I sincerely feel that the above-named inmate is a better man for having been a part of these programs and has shown, by his participation, that he is trustworthy and reliable.

"He has proven that his interest lies within the AA program and that he will continue to represent the AA group here to the best of his ability."

It is signed J. E. Hitchcock, sponsor AA Program, Union Correctional Institute.

A psychological evaluation with reference to Floyd Morgan on December 3, 1975.

"Summary of test results:

"Morgan may be diagnosed as exhibiting characteristics of a personality trait disturbance, passive aggressive personality aggressive type.

"Heavy drinking is also indicated in individuals exhibiting this profile.

"They may become tense, moody and depressed because of a low frustration tolerance.

"The Bender visual-motor gestalt test indicates that Morgan has difficulty in accepting and expressing anger and is afraid of his own aggression.

"We further suggest the existence of anxiety about or the fear of losing control over his

4... 035

1 impulses.

2 "Other tests indicate that he has a need to
3 protect himself from external pressures of the
4 environment which results in his isolation from
5 others. He sees himself as small and inadequate
6 and thus may respond to the demands of his environ-
7 ment through inferior means."

8 A Department of Offender Rehabilitation
9 Reclassification and Progress Report during the
10 month of September, 1976.

11 "No. 8-Religion: Mass, two times per week.

12 "Education, tested IQ of 99, literacy reading
13 level of 8.2.

14 "Subject states he has attained 19 semester
15 hours at Lake City Community College. Subject
16 claims he is taking 6 semester hours at this time.

17 "Other programs: Subject states that, in his
18 spare time, he is involved in AA and studying his
19 junior college homework.

20 "Team decisions and recommendations: Reduce
21 to minimum."

22 A letter from the State of Florida, Office
23 of Governor Reubin O'D. Askew. It is directed to
24 Mr. Floyd Morgan.

25 "Dear Mr. Morgan:

L. 036

1 "As Governor, I wish to express the apprecia-
2 tion of all individuals concerned for the quick
3 and decisive action you took without regard for
4 your own safety at the Florida State Prison in the
5 recent disturbance in the garment factory on
6 April the 30th, 1973.

7 "Your valuable assistance prevented further
8 injury and perhaps death to the staff members in-
9 volved.

10 "I fully realize that, by the actions you
11 took, you placed yourself in jeopardy with your
12 fellow inmates and this action is noteworthy.

13 "A copy of this letter is being sent to the
14 Parole Commission for placement in your records.

15 "Sincerely,

16 "Reubin O'D. Askew, Governor."

17 Thank you, Your Honor.

18 THE COURT: Anything further, Mr. Cervone?

19 MR. CERVONE: No evidence, Your Honor.

20 MR. SALMON: That is all that I have, Your
21 Honor.

22 THE COURT: All right, sir.

23 The same order of argument, I believe, applies
24 that applies to the trial part.

25 You may proceed.

L. 037

1 Excuse me just a moment. Would counsel
2 approach the bench, please.

3 MR. CERVONE: Yes, sir.

4 MR. SALMON: Yes, Your Honor.

5 (Discussion at the bench.)

6 THE COURT: Ladies and gentlemen, we will now
7 hear the arguments of counsel insofar as they are
8 applicable to the penalty phase of this trial. The
9 same order of argument will follow.

10 As you observed in the trial of the case
11 yesterday, you will first hear from Mr. Cervone,
12 speaking for the State, and then Mr. Salmon, speak-
13 ing for the defendant, and then Mr. Cervone will
14 use such of his time, as he has reserved for that
15 purpose, to reply to the argument of counsel for
16 the defendant.

17 Each side will be allocated 45 minutes for
18 their final arguments.

19 MR. SALMON: Excuse me, Your Honor, but I
20 must ask to be allowed to approach the bench again.

21 THE COURT: Very well.

22 (Discussion at the bench.)

23 THE COURT: Ladies and gentlemen, contrary
24 to what I mentioned a moment ago, the arguments
25 will be limited here to one argument to a side.

E. 038

1 The State will speak first and then will be
2 followed by Mr. Salmon, and that will conclude the
3 arguments upon the penalty phase.

4 You may proceed, Mr. Cervone.

5 MR. CERVONE: Thank you, Your Honor.

6 I would not be so presumptuous as to attempt
7 to speak to you as to the responsibility of this
8 particular phase of this trial that places each of
9 you under. It is your responsibility, and yours
10 alone, to weigh what mitigating and aggravating
11 circumstances the Court will read to you and to
12 render an advisory verdict of death or life in this
13 particular case.

14 You have heard the evidence in the case, it-
15 self, yesterday, and I ask you to think back and
16 recall that evidence as I go over these factors,
17 which the Court will shortly instruct and define
18 for you. Consider that, as properly you may, as
19 to whether or not the aggravating circumstances,
20 that I wish to mention to you, exists. Consider
21 it in addition to that which you have heard this
22 morning.

23 By your verdict yesterday afternoon, you
24 have declared this defendant is guilty of the crime
25 of first degree murder, the premeditated killing

E. 039

1 of Joe Edward Saylor.

2 This morning I have read to you, and have had
3 introduced into evidence, three documents which
4 show to you and establish to you that this defend-
5 ant was not committing the crime of murder for the
6 first time when he killed Joe Edward Saylor.

7 The documents which were read to you estab-
8 lish that, in 1970, in Hillsborough County, he was
9 indicted for the first degree murder of one James
10 Louis Webb, and subsequent to that, in 1971, he
11 tendered a plea of nolo contendere, no contest,
12 to the crime of murder in the first degree, but
13 was for reasons that we should not speculate upon,
14 sentenced for the crime of murder in the second
15 degree, and that he has been incarcerated in the
16 state penal system since then for homicide or
17 murder.

18 Statutes in this state have established cer-
19 tain criteria, which you should consider in your
20 own mind when deciding what verdict you would ad-
21 vise the Court to impose.

22 The only rational way, that any jury can con-
23 sider this question, is to leave out emotion and
24 to look at those factors and weigh them individually,
25 in your own minds, and see where the balance lies

L. 040

1 before you render your verdict to this Court.

2 In light of that, it would be my intention at
3 this time to review those factors with you, and
4 give you my own impressions as to what they show
5 in this particular case.

6 Under the aggravating circumstances, first,
7 which you will hear, is that the capital felony,
8 committed by the person under sentence, was done
9 while that person was under sentence of imprison-
10 ment.

11 You have convicted this man of a capital
12 felony of first degree murder of Joe Edward Saylor,
13 and you know, from the evidence and from the docu-
14 mentation presented to you today, that when he
15 committed that crime of first degree murder, he
16 was under sentence of imprisonment. He was im-
17 prisoned at the Union Correctional Institution for
18 the second degree murder conviction that he re-
19 ceived in Tampa in 1971.

20 I submit to you, therefore, that there is no
21 dispute that that first aggravating circumstance
22 exists. He was under sentence of imprisonment when
23 he committed this crime.

24 Second, the defendant was previously convicted
25 of another capital felony or of a felony involving

E. 041

1 the use or threat of violence to the person.

2 By the documentation, introduced to you today,
3 you know that Floyd Morgan, in 1970, committed the
4 crime of murder against the person named as Webb
5 in the documents that were handed to the Court.

6 I submit to you that this defendant, there-
7 fore, has previously been convicted of the felony
8 involving the use or threat of violence to the per-
9 son of another individual. Therefore, these first
10 two aggravating circumstances exist beyond any
11 dispute.

12 The third aggravating circumstance is that
13 the defendant created great risk of death to many
14 persons. I do not argue that to you.

15 Fourth, that the capital felony was committed
16 while the defendant was engaged in the commission
17 of or attempt to commit or flight from robbery,
18 rape, arson, burglary, kidnapping, airplane piracy
19 or the placing of a bomb. I do not submit to you
20 that that exists.

21 Fifth, that the capital felony was committed
22 for the purpose of avoiding or preventing lawful
23 arrest or effecting an escape. I do not suggest
24 to you that that exists.

25 Sixth, that the capital felony was committed

L. 042

1 for pecuniary gain, for monetary gain. I will not
2 suggest to you that that exists. You may weigh
3 the evidence, in your own minds, and determine it.

4 Seventh, that the capital felony was committed
5 to disrupt or hinder the lawful exercise of any
6 governmental function or enforcement of laws. I
7 will not argue to you that that exists.

8 Eighth, the capital felony was especially
9 heinous, atrocious, or cruel. You know how he
10 killed Joe Edward Saylor.

11 The Court will define for you each of these
12 phrases, especially heinous, atrocious or cruel.
13 I submit to you that this death was a cruel death,
14 that it was heinous, and that it was atrocious.

15 I ask each of you, when you deliberate, to
16 consider the definitions that the Court will place
17 upon those terms, and to think back to what you
18 know of the death of Joe Edward Saylor.

19 It is my opinion and my suggestion to you
20 that you will find that his death was one which is
21 contemplated by this particular aggravating cir-
22 cumstance.

23 In summary of these aggravating circumstances
24 then, it is my submission to you that three of
25 them exist.

E 043

1 First, beyond any doubt, that the person who
2 committed the crime, Morgan, was under sentence of
3 imprisonment when he committed it.

4 Second, beyond any doubt that the person who
5 committed the crime, Morgan, was previously con-
6 victed of a felony involving threat of violence or
7 the use of violence against another person. You
8 have it in the documentation which will be given
9 to you.

10 Third, the crime was especially heinous,
11 atrocious, or cruel, and you have that in front of
12 you, as well.

13 To balance those circumstances, the statutes
14 have also enumerated certain mitigating circum-
15 stances. I would like to go over with you briefly
16 each of those, as well.

17 First, that the defendant has no significant
18 history of prior criminal activity. It would be
19 ludicrous for anyone to suggest to you that the
20 man, who sits before you for a previous murder
21 conviction, who has now been convicted by you of
22 first degree murder, has no significant history
23 of prior criminal activity.

24 That mitigating circumstance does not exist.

25 Second, the capital felony was committed

EL 044

IN THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA.

FLOYD MORGAN,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

VOLUME IV

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- - -

COFFEE, THOMPSON & HAVENER
CERTIFIED SHORTHAND REPORTER
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E-045

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1 while the defendant was under the influence of
2 extreme mental or emotional disturbance. You have
3 heard, I submit to you, no evidence that, at the
4 time he killed Joe Saylor, that this defendant was
5 operating under extreme mental or emotional dis-
6 turbance.

7 I will address myself shortly to the psycho-
8 logical evaluations in the court which defense
9 counsel has presented before you, but I ask you to
10 consider those, and realize the times that they
11 were taken, from what they say, that they do not
12 indicate that this man was under any emotional or
13 mental disturbance at the time he killed Saylor.

14 I suggest that this circumstance does not ex-
15 ist.

16 Third, the victim was a participant in the
17 defendant's conduct or consented to the act. From
18 the evidence you have heard, at the guilt or inno-
19 cence phase of this trial, you know, beyond any
20 doubt, that Joe Edward Saylor was no participant
21 in his death. You know how he died, what he was
22 doing when he was assaulted.

23 I suggest to you that this mitigating factor
24 does not exist.

25 Fourth, the defendant was an accomplice in

L. 046

1 the capital felony committed by another person and
2 his participation was relatively minor. You know,
3 from the evidence you heard yesterday and the day
4 before that, that this defendant was the sole per-
5 petrator of this crime, and you know that his par-
6 ticipation was far from relatively minor, and that
7 he, in fact, is the one who killed Joe Edward
8 Saylor. Your verdict says that.

9 Therefore, I suggest to you that this miti-
10 gating factor does not exist.

11 Fifth, the defendant acted under extreme
12 duress or under substantial domination of another
13 person. I suggest to you that there is no evidence
14 indicating that this defendant acted under extreme
15 duress. There is nothing but an indication that
16 he acted cold-heartedly and clear-mindedly. There
17 is no evidence that he was under the substantial
18 domination of another person.

19 There is no evidence that this mitigating
20 factor exists, and I ask you to disregard it.
21 Next, the capacity of the defendant to appreciate
22 the criminality of his conduct or to conform his
23 conduct to the requirements of law was substan-
24 tially impaired. I suggest to you that this does
25 not exist.

L. 047

1 There is no evidence indicating to you that
2 this defendant suffers from any degree of retarda-
3 tion, any mental disturbance, or any impairment of
4 the mind. There is, quite the contrary, evidence
5 placed before you by defense counsel that, while
6 he has been incarcerated on his prior murder con-
7 viction, he has been able to pursue educational
8 goals, he has been able to function as a rational
9 person, and he has been shown to be of normal in-
10 telligence.

11 I suggest to you that there is nothing indi-
12 cating his having a lack of capacity to understand
13 what he did.

14 In furtherance of that, your verdict indicates
15 you believe him to have committed a premeditated
16 murder, and that is not consistent with someone who
17 has no capacity to understand what he was about to
18 do on July the 16th of last year.

19 Finally, the age of the defendant at the time
20 of the crime. It is my submission to you, and in
21 the evidence, that this defendant is 31 years of
22 age. I believe that at the age of 31 offers him
23 no shelter and no recourse.

24 This mitigating circumstance does not exist.

25 It is my position then, and one which I would

L. 048

1 ask each of you to consider strongly, that there
2 is no mitigating circumstances in this particular
3 case. Quite the contrary, those things which have
4 been presented to you in mitigation argue against
5 mitigation.

6 You have heard a letter from the defendant's
7 mother indicating that he has suffered head in-
8 juries since he was 12 years of age. This does
9 not indicate any mitigation whatsoever.

10 You have heard institutional reports dated in
11 1972 saying that his prognosis for life within the
12 institution is good.

13 I ask you to reflect on what happened to Joe
14 Edward Saylor and tell me whether or not Floyd
15 Morgan had a good prognosis for satisfactory in-
16 stitutionalization. Perhaps, in 1972, someone
17 thought he did but, in 1977, he showed them to be
18 wrong.

19 In 1973 it was written that he had one of the
20 better attitudes that were seen. In 1977, when he
21 killed Saylor, that was shown to be wrong.

22 In 1975 the psychological or psychiatric
23 evaluations indicated that he had latent hostili-
24 ties and used the word "possibly", when saying
25 possibly he might not be a menace to society upon

2 049

1 his release.

2 Further psychiatric evaluations, which have
3 been read to you by counsel, shows that he has
4 personality disturbances, is aggressive, is, in
5 fact, afraid of his own aggression.

6 These offer no mitigation, in my estimate.

7 In 1976, the IQ tests, which I have mentioned,
8 were given. In 1978, Dr. McMahon, a licensed
9 clinical psychologist, has written for you the fact
10 that, had he been given therapy, just possibly the
11 most recent incident might have been avoided.

12 You have heard this letter read to you in its
13 entirety and you have seen in it nothing which
14 indicates any mitigation whatsoever.

15 In summary, I would say to you that there are
16 numerous aggravating circumstances, and that I
17 believe three of them to exist. Well, sure, you
18 must find two of them exist because they are in
19 the evidence in the form of a prior conviction and
20 his current incarceration.

21 The third, the nature of the death of Joe
22 Saylor is something for you to deliberate in the
23 jury room and I believe that you will find that
24 that, too, exists.

25 I believe you will also find that none of the

1 mitigating circumstances, which will be mentioned
2 to you by the Court, exists.

3 It is, therefore, your responsibility, in
4 weighing these things, should you find the aggra-
5 vating circumstances to outweigh the mitigating
6 circumstances, and I suggest to you there being a
7 total lack of mitigation that they must, to return
8 an advisory verdict of death in this case.

9 In 1970 Floyd Morgan killed in Tampa when he
10 was a member of our own free society. It was the
11 determination of the sentencing court, in that
12 particular case, that he could not be allowed to
13 live in society as a free man and, for that killing,
14 he was removed from the freedom of society and
15 placed in what would hopefully be a ^{more} structured,
16 more rigid society of an institution where perhaps
17 he could live safely and where others could live
18 with him in safety.

19 In 1977, by your verdict yesterday, he
20 killed a second time.

21 There is nothing left at this point, I sug-
22 gest to you, for one who could not function in
23 free society and who cannot now function in con-
24 fined society, but for you to recommend to the
25 Court the imposition of the death penalty.

L. 051

1 A careful weighing of all of the circumstances
2 and all of the evidence as to the crime and as to
3 the defendant's background, I am sure will estab-
4 lish to you that this is so.

5 It may be regretable but sympathy has no part
6 in your decision. Sympathy played no part in the
7 crimes that were committed by this man, and I ask
8 you to consider that, as well, when you render
9 your verdict.

10 I ask that that verdict reflect the fact that
11 there is sufficient aggravating circumstances in
12 his background and in this crime to outweigh any
13 mitigating circumstance and that, in fact, no miti-
14 gation exists and, based upon that, to return an
15 advisory verdict to this Court of a death sentence.

16 Thank you.

17 THE COURT: Ladies and gentlemen, I don't
18 wish to interrupt Mr. Salmon's argument. Counsel
19 has 45 minutes for his argument.

20 We have been here for about an hour and I
21 don't wish to interrupt Mr. Salmon's argument to
22 recess once he has begun.

23 Would you like to take a short recess before
24 we hear his argument?

25 THE JURY: Yes.

L... 052

1 THE COURT: All right. Let's take about a
2 ten-minute recess.

3 THE BAILIFF: Court will be in recess for ten
4 minutes.

5 (Thereupon, a short recess was had.)

6 THE COURT: Call the court to order.

7 THE BAILIFF: Court will come to order.

8 THE COURT: Mr. Salmon, you may proceed with
9 your argument.

10 MR. SALMON: Thank you, Your Honor.

11 Ladies and gentlemen of the jury, I needed to
12 compose myself the last time I appeared before you,
13 and I am going to have to ask for your considera-
14 tion at this point because it is going to be a lot
15 worse for me.

16 I would say to you, right at the beginning,
17 that I hope that what I have to offer you will
18 find useful. I am hoping that it will be logical
19 enough to make sense to you.

20 I would ask that you give me the benefit of
21 the doubt and try and listen closely to what might
22 seem to be disjointed but be able to pull a string
23 through it and make some sense out of what I feel
24 is deserving your consideration.

25 I usually don't appear before a jury with

4-053

1 notes, but I felt that, in this particular situa-
2 tion, there was no way that I could avoid it. I
3 apologize for it.

4 The object of your deliberations, at this
5 point, is a decision on whether or not life should
6 be ended or should life be retained. I submit to
7 you that that is the question. At this point, we
8 are not talking about people any longer, we are
9 talking about life, itself.

10 I see, arguably, two reasons for imposing the
11 death penalty. One is as a deterrent to crime; we
12 spoke of that earlier.

13 Unless I misunderstood, it was my impression,
14 if not all of you, certainly a vast majority of
15 you, believe it was not a deterrent.

16 I would agree with that, and I would submit
17 to you that all of the research, all of the scien-
18 tific data, backs that up also. It is not a deter-
19 rent.

20 I would ask you, for whatever reason, that
21 you agree with that, and I think that this kind
22 of topic is something that is perhaps something
23 that we can't try and lay out all of the reasons
24 why a person feels the way he does, but I submit
25 to you that you are right.

E. 054

1 I don't want to see that spark die at any
2 point.

3 The second is one that is closer to the very
4 basis of feelings that I guess that we all have;
5 so, I think I have to mention it, and that is one
6 of retribution or revenge, an eye for an eye, a
7 tooth for a tooth. I don't know that that has ever
8 gotten anybody anyplace.

9 I think that laws, the purpose of a jury, is,
10 in fact, designed to prevent that. That is one of
11 the things that we hope to accomplish by our sys-
12 tem of laws, that we don't have to revert to re-
13 venge.

14 I submit to you that, as a body within that
15 system, the very body that is designed, as one of
16 its functions, to prevent that, should not con-
17 sider this matter of revenge. I think it plays no
18 part in the matter of life.

19 Mr. Cervone mentioned the death of Joe Saylor.
20 Could I, could anyone be any more saddened at the
21 loss of Joe Saylor's life? I don't see how, I
22 don't think anybody could.

23 I am as compassionate a man, a person as any-
24 one. The same heart beats in here that beats in-
25 side your chest. I think, rather, our compassions

055

1 now should be directed to life, for whatever reason,
2 some of them more traditional ones, the possibil-
3 ity of putting to death an innocent man. I don't
4 know if that has any viability or not, but I don't
5 think that it is the only one that should be con-
6 sidered.

7 I think the question here is whether or not,
8 for whatever reason, life should not be ended.
9 That is what I would hope to try and convince you
10 of at this point.

11 One other thing that you all said, at the be-
12 ginning of our deliberations at the very beginning
13 of this trial, was that there was no situation,
14 absolutely no situation in a case of first degree
15 murder, where you could not consider life. Again,
16 a spark that I do not want to see put out because
17 I think that is the one that burns most brightly
18 at this point.

19 I submit to you, ladies and gentlemen, that
20 this is not a case, not in the contemplation of
21 law, not in the contemplation of man, where death
22 is indicated.

23 Mr. Cervone mentioned the aggravating and
24 mitigating circumstances that you now have for your
25 consideration. I would also like to go over those.

056

1 I am -- again, I am going to ask that you not
2 find whatever merit that I might have, with re-
3 spect to mitigating circumstances, only in what I
4 say. I submit to you that you have your own rea-
5 sons, many of which I probably am not aware of.

6 I gave you my thoughts only as perhaps ele-
7 ments that would add to the reasons that you al-
8 ready have in mitigation in this case.

9 The first one, "A," the defendant has no sig-
10 nificant/^{history}of prior criminal activity. I think in
11 every instance, in every situation when you are
12 dealing with what does something mean, how do we
13 decide what the people who wrote this meant when
14 they wrote it? Is it so clearly defined that it is
15 only subject to one definition? I think not.

16 The key phrase obviously is "significant
17 history." Did Mr. Cervone present anything to you
18 that was indicative of Floyd Morgan being a life-
19 long criminal problem? No, he didn't, because, in
20 fact, it is not so.

21 I think one clear definition of "significance"
22 is whether or not there is a substantial quantity
23 of prior criminal activity. I think that is con-
24 templated in the very definition of the word, and
25 I think it was certainly contemplated by the

L 057

1 Legislature when passed in this statute.

2 One way that you can look at it is: Did the
3 Legislature contemplate ending the life because of
4 one prior criminal instance? I think it is some-
5 thing that you have to consider. I think it is
6 not what they considered and I feel that it is a
7 mitigating circumstance.

8 "B" is that the capital felony was committed
9 while the defendant was under the influence of
10 extreme mental or emotional disturbance.

11 I don't know what that means, I don't know
12 how you decide. I know that you have heard cer-
13 tain things, and you are aware of the conditions
14 inside of prison. You have people sitting in your
15 body now who can tell you what some of that pres-
16 sure is, what the incredible conditions are like
17 inside those walls, and what it does to people,
18 how it makes them act. Not that it is something
19 to be explained, not that it is to be something
20 that it is understood, but something that, in fact,
21 does have an impact on how people act inside the
22 prison.

23 There are a couple of others that I think fit
24 in that same category. The defendant acted under
25 extreme duress or under substantial domination of

1 another person. Is there any way that we can tell,
2 sitting out here, what throws a prisoner, inside
3 those walls, into a state of extreme emotional
4 distress? There is no way. It is a life that very
5 few people are forced to live, but it is reality
6 in there.

7 It is the conditions, inside those walls,
8 that cause people to act the way they do. Does
9 it create duress? I certainly think that it can;
10 I certainly think that it can.

11 "E" is the defendant acted under extreme
12 duress -- I am sorry. In addition to that is that
13 he acted under substantial domination of another
14 person.

15 Again, what did the Legislature mean when they
16 passed that? Did it mean that somebody had to be
17 walking around with a gun to your head to make you
18 do something? Did it mean that you had to hold
19 one of your children hostage to make them do what
20 you wanted them to do? I don't know.

21 I think that there is something else to at
22 least consider and I think that you have heard it
23 in the main course of this trial; other people
24 being involved, physical evidence demonstrating
25 that certainly every possible exclusion of what

059

1 happened was not, in fact, eliminated.

2 You are dealing with a totally irreversible
3 decision, totally. I think you have got to con-
4 sider, in view of what you heard during the evi-
5 dence stage of this trial, whether or not those
6 things were, in fact, involved. Is it possible?
7 That is all that we are talking about. Is it rea-
8 sonable to consider them?

9 The capacity of the defendant to appreciate
10 the criminality of his conduct or to conform his
11 conduct to the requirements of law was substan-
12 tially impaired.

13 I think that certainly the evidence that I
14 presented, in my first appearance to you today,
15 cuts both ways.

16 We are only talking, I think, at this point
17 justifiably about one edge of that, and that is it
18 is not a situation, as Mr. Cervone suggested, that
19 he was intellectually capable and that things were
20 going along fine in the prison.

21 He had a very dramatic turn of events, some-
22 thing set him off.

23 He is not, at the time of this act, the per-
24 son that is demonstrated to be a person who was
25 worthwhile, capable of being rehabilitated,

1 capable of functioning. He was a man under the
2 influence of other things that I read in those re-
3 ports, with a different personality. It was some-
4 body else, it wasn't the person that could get
5 along.

6 The reports indicate that he had a fear, not
7 that he was concerned about his own hostilities,
8 his own latent hostilities, his own aggression,
9 but that he was afraid of them, that he couldn't
10 control it, that when the provocation arose, he
11 lost sight of his other abilities.

12 That, I think, is one of the things con-
13 templated in this enumerated mitigating circum-
14 stance.

15 I think that the reports indicate that, in
16 fact, at that particular time he did not appreci-
17 ate fully what he was doing and that he could not
18 conform. As the reports indicated, he had lost
19 control, for whatever reason, and we don't know
20 that, we don't know why. There are too many rea-
21 sons to try to find out.

22 The age of the defendant at the time of the
23 crime, that is all it says; that is all it says.

24 Now, they say "age" here. Age is obviously
25 the key word in that mitigating circumstance.

061

1 Well, how did they intend that to be used?

2 Dr. McMahon's letter indicates that he is
3 not a person who is wasted, he is not so far gone
4 that he cannot be brought back to a stable situa-
5 tion. It does not indicate that he is so old that
6 it would be impossible for him, through the psycho-
7 therapy which was indicated so many years ago,
8 were only implemented that we would have, at least,
9 a possibility of a different person, we would be
10 dealing with a different personality.

11 I think that that is certainly one of the
12 ways that age is to be considered, whether or not
13 he is not so old or so far down the road that he
14 cannot be, through proper therapy, retrieved in
15 some respect.

16 I don't know how many that is, I don't know.
17 All I know is that the law says that you must de-
18 cide whether or not they are outweighed, one by
19 the other or vice versa. It is not a counting
20 process. You don't go back in there and say,
21 "Well, our decision is an easy one. All we have
22 to do is count up and see how many they had and see
23 how many he had."

24 That is not the law, the judge will instruct
25 that that is not the law. It is whether or not

1 mitigating circumstances that you find, and you
2 are the only ones to decide mitigation in this
3 case, mitigation in whatever form you find it, out-
4 weighs aggravation.

5 I would like to comment briefly on the aggra-
6 vating circumstances.

7 The capital felony was committed by a person
8 under sentence of imprisonment; on the bare face
9 of it, indeed, we have that, there is no getting
10 around it.

11 I think that the consideration, in determina-
12 tion of whether or not life should be ended, is
13 whether or not it is fair and proper to be con-
14 sidered, as such. Why do I feel it is unfair?
15 Well, we have talked about some of them. The in-
16 credible pressures inside of the prison, the frus-
17 trations, the anxieties. It seemed to me that if
18 they meant -- well, let me put it this way: It
19 seems to me that, if we agree with that, if you
20 agree with me, that the things are different in-
21 side a prison, that that is a situation that could
22 cause a person to act irrational and that it is
23 almost not to be considered as an aggravating
24 circumstance, because it is something that causes
25 the illogical behavior, it is something that causes

2- 063

1 the irrational act. It is not something that turns
2 it into, again, the cold-blooded nature, the aggra-
3 vating nature.

4 On the other hand, did they consider it purely
5 and simply in just a matter-of-fact way that,
6 "Well, if you are in prison and you commit a capi-
7 tal felony, we are going to count it as an aggra-
8 vating circumstance because you are a prisoner,
9 because you have a record, because you have done
10 something bad."

11 If that is what they consider it, then I
12 think it is unfair in the sense, as you all know,
13 as we all know, there are people, in the thousands,
14 I suppose, walking around the streets today that
15 have records that are so much longer, so much
16 worse, so much more horrible than Floyd Morgan's.

17 Why should that person, if it should happen
18 to him again, be able to come and say, "Well, that
19 is an aggravating circumstance that is not present?"
20 I don't think that it fits for that reason, because
21 the only things that they are considering is that
22 he is a prisoner.

23 Floyd Morgan does not come anywhere near
24 the records of some of the people that are walking
25 around free today.

064

1 The defendant was previously - and I emphasize
2 this word - convicted of another capital felony or
3 a felony involving the use or threat of violence
4 to the person.

5 I would submit to you that that is not to be
6 considered in the disjunctive, they are together,
7 it is not an either/or situation.

8 The two phrases mentioned in that are of co-
9 equal status. They are saying it is a capital
10 felony that he was previously convicted of, that
11 is of violence.

12 The thing that you must consider, or one of
13 the things that you must consider with respect to
14 that previous conviction, is, in fact, what the
15 conviction was for.

16 Floyd Morgan was not convicted for a capital
17 felony, he did not plead guilty to a capital
18 felony, he did not admit to a capital felony.

19 He pled what is known as nolo contendere.
20 That is taking it to the judge and saying, "Judge,
21 I am leaving it up to you. You decide what I am
22 guilty of."

23 It is not what the state attorney charged in
24 that case, not what the grand jury Indictment was,
25 but what he was convicted of; it was second degree.

065

1 Some of the others that Mr. Cervone said that
2 he either would not argue or were not applicable,
3 and that is certainly so, and I think that some of
4 the ones that are not applicable are, again, in-
5 dicative of what was contemplated in deciding or
6 presenting to a jury what they would decide, was
7 a case in which life should be ended.

8 Engaged in the commission or was an accomplice
9 in the commission of several of those other of-
10 fenses, robbery, rape, arson, kidnapping, aircraft
11 piracy or the placing of a bomb.

12 The capital felony was committed for the pur-
13 pose of avoiding or preventing lawful arrest.

14 The capital felony was committed for pecuniary
15 gain, to disrupt or hinder the lawful exercise.
16 Now, that is one, two, three, four -- that is
17 four out of the eight that are available that do
18 not, simply do not apply in any way, and the reason
19 or the importance of why they do not apply is the
20 things that are in addition, things in addition
21 that ought to be considered, that the Legislature
22 said ought to be considered, in determining wheth-
23 er or not a person's life should be ended.

24 Now, that brings us to the last one, which I
25 think is tied in with all of the other ones, and

066

1 it is without question the one most important
2 aggravating circumstance that was contemplated in
3 determining the issue of whether or not a life
4 should be ended, and that is whether or not the
5 capital felony was especially heinous, atrocious,
6 or cruel.

7 I submit to you, ladies and gentlemen, that
8 this was not, absolutely not heinous, especially
9 heinous, especially atrocious or especially cruel.

10 I don't know how to say this but I have got
11 to, and I ask that you consider it, do not immedi-
12 ately think that what I have said or am about to
13 say is ludicrous, in that I ought to be examined.

14 I say it because I feel it is important.
15 Especially heinous, especially atrocious, espe-
16 cially cruel is something other than the ordinary
17 class of crime for which the death penalty is
18 provided. That is what that means.

19 Excuse me one moment, ladies and gentlemen.

20 Madam Clerk, could I get you to do some paper-
21 work?

22 THE CLERK: Yes.

23 MR. SALMON: Did anyone pick up any of the
24 papers that I had?

25 THE COURT: Are you looking for the Harden

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1 case?

2 MR. SALMON: I believe I am, Your Honor.

3 Thank you, sir.

4 The very highest court in the State of Flor-
5 ida has given some very clear indications on what
6 was contemplated, not only by this particular ag-
7 gravating circumstance, but also the class of
8 crime, the nature of the act that they intended to
9 be at least considered for the death penalty.

10 The Supreme Court has said: "Heinous, as used
11 in this section, authorizing the death penalty,
12 means extremely wicked, shockingly evil;

13 "The term 'atrocious' as used in this section,
14 means outrageously wicked and vile.

15 "Again, for purposes of the sentencing hearing,
16 to determine the appropriateness of the death
17 penalty for commission of first degree murder, the
18 determination of whether especially heinous aggra-
19 vating circumstances present depends upon whether
20 beyond the horror of murder" - beyond the horror
21 of murder - "is accompanied by such additional
22 facts as to set the crime apart from the norm and
23 whether the murder is conscienceless, pitiless,
24 unnecessarily torturous of the victim."

25 Translated into facts of what I think that

068

1 means is, as said by the Supreme Court again:
2 "Circumstances justifying especially heinous,
3 atrocious and cruel: There was medical testimony
4 that decedent's body bore"--

5 MR. CERVONE: Objection. I object to the
6 introduction of any facts in a case that is not
7 involved in this particular case as being irrele-
8 vant, Your Honor.

9 THE COURT: Objection sustained.

10 MR. SALMON: I submit to you, ladies and
11 gentlemen, that, by the cases determined by the
12 Supreme Court of Florida, as I have said, it was
13 reserved for something beyond the norm, something
14 more than the crime you have under consideration.

15 I think, ladies and gentlemen, that I have
16 covered pretty much everything that I want to.

17 You now have got to decide whether or not
18 life, that is all, that is it.

19 To recap just a little bit, I think that you
20 have what we earlier talked about, the ability to
21 always, to always be compassionate, always con-
22 sider the alternatives.

23 This is not a case that should take or
24 should remove from your consideration the things
25 that you have already sworn and promised me that

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1 you hold very dear. I think that is important.

2 I guess what I am trying to say is that it
3 isn't everything that you have heard over the last
4 four days, everything that you have heard here
5 today especially, everything that you know, every-
6 thing that you hold to be dear, everything that
7 you believe in, in this case does not justify the
8 ending of life.

9 Thank you very much.

10 THE COURT: Would counsel please approach the
11 bench.

12 MR. SALMON: Yes, sir.

13 MR. CERVONE: Yes, sir.

14 (Discussion at the bench.)

15 THE COURT: Ladies and gentlemen of the jury,
16 it is now your duty to advise the Court as to
17 what punishment should be inflicted or imposed upon
18 the defendant, Floyd Morgan.

19 As you have been told, the final decision,
20 as to what punishment shall be imposed, is the
21 responsibility of the judge. However, it is your
22 duty to follow the law, which will now be given
23 you by the Court, and render to the Court an ad-
24 visory sentence based upon your determination, as
25 to whether sufficient aggravating circumstances

070

1 exist to justify the imposition of the death
2 penalty, and whether sufficient mitigating circum-
3 stances exist to outweigh any aggravating circum-
4 stances.

5 Your advisory sentence should be based upon
6 the evidence which you have heard while trying
7 the guilt or innocence of a defendant and evidence
8 which has been presented to you in these proceed-
9 ings.

10 The aggravating circumstances, which you may
11 consider, are limited to such of the following as
12 may be established by the evidence:

13 1. The crime for which a defendant is to be
14 sentenced was committed while the defendant was
15 under sentence of imprisonment;

16 2. At the time of the crime, for which the
17 defendant is to be sentenced, he had been previ-
18 ously convicted of another capital offense or of
19 a felony involving the use or threat of violence
20 to some person;

21 3. A defendant, in committing the crime for
22 which he is to be sentenced, knowingly created a
23 great risk of death to many persons;

24 4. The crime for which a defendant is to be
25 sentenced was committed while a defendant was

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engaged, or was an accomplice in the commission of, or an attempt to commit or flight after committing or attempting to commit any robbery, rape, arson, burglary, kidnapping, aircraft piracy or the unlawful throwing, placing or discharging of a destructive device or bomb;

5. The crime for which a defendant is to be sentenced was committed for the purpose of avoiding, or preventing a lawful arrest, or effecting an escape from custody;

6. The crime for which a defendant is to be sentenced was committed for pecuniary gain;

7. The crime for which a defendant is to be sentenced was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws;

8. The crime for which a defendant is to be sentenced was especially heinous, atrocious or cruel.

"Heinous" means extremely wicked or shockingly evil.

"Atrocious" means outrageously wicked and vile.

"Cruel" means designed to inflict a high degree of pain, utter indifference to or enjoyment

072

1 of the suffering of others or pitiless.

2 If you do not find that there existed any of
3 the aggravating circumstances described to you, it
4 would be your duty to recommend a sentence of life
5 imprisonment.

6 Should you find one or more of these aggra-
7 vating circumstances -- if you should find one
8 or more of these aggravating circumstances exist,
9 it will then be your duty to determine whether or
10 not sufficient mitigating circumstances exist to
11 outweigh the aggravating circumstances. The miti-
12 gating circumstances you may consider, if estab-
13 lished by the evidence, are as follows:

14 1. A defendant had no significant history of
15 prior criminal activity;

16 2. The crime for which a defendant is to be
17 sentenced was committed while the defendant was
18 under the influence of extreme mental or emotional
19 disturbance;

20 3. The victim was a participant in the de-
21 fendant's conduct or consented to the act;

22 4. A defendant was an accomplice in the
23 offense for which he is to be sentenced, but the
24 offense was committed by another person, and the
25 defendant's participation was relatively minor;

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1 5. A defendant acted under extreme duress
2 or under substantial domination of another person;

3 6. The capacity of a defendant to appreciate
4 the criminality of his conduct, or to conform his
5 conduct to the requirements of the law, was sub-
6 stantially impaired;

7 7. The age of a defendant at the time of the
8 crime.

9 Aggravating circumstances must be established,
10 beyond a reasonable doubt, before they may be con-
11 sidered by you in arriving at your decision.

12 Proof of an aggravating circumstance, beyond
13 a reasonable doubt, is evidence by which the under-
14 standing, judgment, and reason of the jury are well
15 satisfied and convinced to the extent of having a
16 full, firm and abiding conviction that the circum-
17 stance has been proved, to the exclusion of and
18 beyond a reasonable doubt.

19 Evidence tending to establish an aggravating
20 circumstance, which does not convince you, beyond
21 a reasonable doubt, of the existence of such cir-
22 cumstance at the time of the offense, should be
23 wholly disregarded.

24 If one or more aggravating circumstances are
25 established, you should consider all the evidence

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1 tending to establish one or more mitigating cir-
2 cumstances and give that evidence such weight as
3 you feel it should receive in reaching your con-
4 clusion as to the sentence which should be imposed.

5 The sentence, you recommend to the Court,
6 must be based on the facts as you find them from
7 the evidence and the law, as given to you, by the
8 Court. Your advisory sentence must be based upon
9 your finding of whether sufficient mitigating
10 circumstances exist which outweigh any aggravating
11 circumstances. Based on these considerations, you
12 should advise the Court whether a defendant should
13 be sentenced to life imprisonment or to death.

14 In these proceedings, it is not necessary
15 that the advisory sentence of the jury be unani-
16 mous, and an advisory sentence may be rendered upon
17 the finding of a majority of the jury.

18 Should a majority of the jury determine that
19 a defendant should be sentenced to death, you
20 should recommend an advisory sentence as follows:

21 "A majority of the jury advise and recommend
22 to the Court that it impose the death penalty."

23 On the other hand, if, after considering all
24 the law and the evidence touching upon the issue
25 of punishment, a majority of the jury determine

075

1 a defendant should not be sentenced to death,
2 then you should render an advisory sentence as
3 follows:

4 "A majority of the jury advise and recommend
5 to the Court that it impose the sentence of life
6 imprisonment."

7 The Court instructs you, as a matter of law,
8 that, if the defendant is sentenced to life im-
9 prisonment, he will not be eligible for parole
10 during the first 25 years thereof.

11 The law requires that seven or more members
12 of the jury agree upon any recommendation advising
13 either the death penalty or life imprisonment.

14 You will now retire to consider your recom-
15 mendation, and when seven or more are in agreement,
16 as to what sentence should be recommended to the
17 Court, that form of recommendation should be
18 signed by your foreman and returned into court.

19 Ladies and gentlemen, before actually com-
20 mencing your deliberations, the Court is going to
21 declare a recess until 1:30 -- Mr. Sheriff, will
22 that be sufficient?

23 THE BAILIFF: Yes, sir.

24 THE COURT: -- to enable you to have lunch
25 and so forth before you begin your deliberations.

076

1 Forms for each of the advisory sentences,
2 that I have referred to, have been prepared for
3 your use and they will be delivered to the jury
4 room for you.

5 You can place those on the table in the jury
6 room, Mr. Bailiff.

7 Is there anything further before we recess,
8 ladies and gentlemen?

9 MR. CERVONE: None for the State, Your Honor.

10 MR. SALMON: None for the defense, Your Honor.

11 THE COURT: All right, sir. Court will be in
12 recess until 1:30 and, upon your return, ladies
13 and gentlemen, you may go directly to the jury
14 room to begin your deliberations.

15 You must remain together, however. I will
16 instruct you not to discuss this matter among your-
17 selves nor with anyone else until you have actu-
18 ally retired to the jury room to commence your
19 deliberations.

20 Court will be in recess.

21 THE BAILIFF: Court will be in recess until
22 1:30.

23 (Thereupon, the jury retired from the court-
24 room and the following further proceedings were
25 had out of the presence of the jury:)

077

1 THE COURT: All right. Excuse me, gentlemen,
2 but, before proceeding with this case, in the
3 event that there is any question that should arise
4 with respect to the peremptory challenges, and in
5 order to let any appellate court read the entire
6 record, I intend to file in the minutes of the
7 court -- in the records of the court, at the con-
8 clusion of the trial, my jury diagram showing, by
9 number, the peremptory challenges exercised by
10 either party.

11 MR. CERVONE: Yes, sir.

12 MR. SALMON: Yes, Your Honor.

13 (Thereupon, court recessed at 11:45 o'clock
14 a.m., to be reconvened at 1:30 o'clock p.m. of the
15 same day.)
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078

AFTERNOON SESSION

1:30 o'clock p.m.
June 15, 1978

* * *

(Thereupon, court stood in recess pending return of the jury.)

THE COURT: Court will come to order.

THE BAILIFF: Court will please come to order.

THE COURT: Bring the jury in, Mr. Bailiff.

THE BAILIFF: Yes, sir.

at 2:20 o'clock p.m.

(Thereupon, the jury returned to the courtroom, was seated in the box, and the following further proceedings were had in the presence of the jury:)

THE COURT: Ladies and gentlemen of the jury, have you agreed upon an advisory sentence to the Court in this case?

JUROR NO. 1: We have, Your Honor.

THE COURT: Would you please give the verdict to the clerk, Mr. Foreman.

JUROR NO. 1: Yes, sir.

THE COURT: All right. The defendant will stand and face the jury as the clerk reads the verdict.

THE CLERK: "Advisory sentence:

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1 The majority of the jury advise and recommend
2 to the Court that it impose the death penalty upon
3 the defendant, Floyd Morgan.

4 "Dated at Lake Butler, Union County, Florida,
5 this 15th day of June, 1978."

6 THE COURT: Please be seated, ladies and
7 gentlemen.

8 Ladies and gentlemen of the jury, it is neces-
9 sary that we poll the jury to make absolutely sure
10 the advisory sentence that you have just returned
11 is that upon which a majority of you agree.

12 We are going to ask each of you individually
13 concerning this, but you are instructed that it is
14 not necessary to state how you personally voted or
15 how any other person voted, but to state only if
16 the advisory sentence, as read, was correctly
17 stated.

18 Would the clerk please poll the jury.

19 THE CLERK: Do you, Marjorie Dobbs, agree and
20 confirm that a majority of the jurors join in the
21 advisory sentence you have just heard read by the
22 clerk?

23 JUROR NO. 6: Yes.

24 THE CLERK: Do you, Dorothy Blom, agree and
25 confirm that a majority of the jurors join in the

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1 advisory sentence you have just heard read by the
2 clerk?

3 JUROR NO. 5: Yes.

4 THE CLERK: Do you, Iris Louise Griffis, agree
5 and confirm that a majority of the jurors join in
6 the advisory sentence you have just heard read by
7 the clerk?

8 JUROR NO. 5: Yes, I do.

9 THE CLERK: Do you, Donald Andrews, agree and
10 confirm that a majority of the jurors join in the
11 advisory sentence you have just heard read by the
12 clerk?

13 JUROR NO. 3: Yes, I do.

14 THE CLERK: Do you, Wade Logan Andrews, agree
15 and confirm that a majority of the jurors join in
16 the advisory sentence you have just heard read by
17 the clerk?

18 JUROR NO. 2: Yes, I do.

19 THE CLERK: Do you, Robert J. Anderson, agree
20 and confirm that a majority of the jurors join in
21 the advisory sentence you have just heard read by
22 the clerk?

23 JUROR NO. 1: Yes, I do.

24 THE CLERK: Do you, Jean N. Waters, agree and
25 confirm that a majority of the jurors join in the

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1 advisory sentence you have just heard read by the
2 clerk?

3 JUROR NO. 7: Yes, I do.

4 THE CLERK: Do you, Henry M. Pinkston, agree
5 and confirm that a majority of the jurors join in
6 the advisory sentence you have just heard read by
7 the clerk?

8 JUROR NO. 8: Yes, I do.

9 THE CLERK: Do you, Kathryn J. Reddish, agree
10 and confirm that a majority of the jurors join in
11 the advisory sentence you have just heard read by
12 the clerk?

13 JUROR NO. 9: Yes, I do.

14 THE CLERK: Do you, Mary L. Douglas, agree and
15 confirm that a majority of the jurors join in the
16 advisory sentence you have just heard read by the
17 clerk?

18 JUROR NO. 10: Yes, I do.

19 THE CLERK: Do you, Sharlynn D. Gordon, agree
20 and confirm that a majority of the jurors join in
21 the advisory sentence you have just heard read by
22 the clerk?

23 JUROR NO. 11: Yes.

24 THE CLERK: Do you, William J. Cowen, agree
25 and confirm that a majority of the jurors join in

1 the advisory sentence you have just heard read by
2 the clerk?

3 JUROR NO. 12: Yes, I do.

4 THE COURT: The verdict will be recorded in
5 the minutes of the court.

6 Adjudication of guilt is withheld at this
7 time. Sentence will be deferred until a date to
8 be announced later by the Court.

9 I will request the Probation and Parole
10 Commission to furnish the Court with a presentence
11 report prior to the imposition of sentence.

12 The defendant is remanded to the custody of
13 the Division of Corrections.

14 Ladies and gentlemen of the jury, you have
15 just completed what I know has been a very burden-
16 some responsibility. I know that such decisions
17 do not come easy, and the responsibility in making
18 that decision rests gravely upon all of us.

19 I would like to thank you for your participa-
20 tion in the trial of the case here this week, and
21 will commend you for your diligence and your punc-
22 tuality in attending to these matters.

23 I cannot wish that you would have enjoyed the
24 responsibility that you have just discharged but,
25 nevertheless, I hope that your presence here has

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1 deepened your understanding and given you greater
2 insight into the means by which the legal affairs
3 of our citizens are administered through the court.

4 I thank you for your service and hope that
5 we will have an opportunity to have you back with
6 us again at some time in the future.

7 The jury will be discharged in just a few
8 moments.

9 Has the defendant been removed from the court-
10 house?

11 THE BAILIFF: I will have to check and see.

12 THE COURT: All right. Would you notify the
13 Probation and Parole office in Starke to prepare
14 a presentence investigation in this case?

15 THE CLERK: Yes, sir.

16 THE BAILIFF: The courthouse is clear, Your
17 Honor.

18 THE COURT: Very well. The jury is dis-
19 charged and court is in recess.

20 THE BAILIFF: Court will be in recess.

21 (Thereupon, at 2:50 o'clock p.m. on June 15,
22 1978, the trial was concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF ALACHUA)

I, William E. Thompson, do hereby certify that the case of Floyd Morgan, Appellant, vs. State of Florida, Appellee, was tried before the Honorable Theron A. Yawn, Jr., Circuit Judge, and a jury of twelve, at the Union County Courthouse, Lake Butler, Union County, Florida, on the above entitled dates; that I was authorized to and did report in shorthand the trial in said cause, and that the foregoing pages numbered 1 through 623, inclusive, constitute a true and correct transcript of my shorthand notes of the trial herein.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 22nd day of August, 1978.

William E. Thompson
William E. Thompson
Official Court Reporter,
Certified Shorthand Reporter,
Registered Professional Reporter.

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1 wounds were. You saw photographs displaying two
2 wounds in the man's back, you saw wounds on his
3 arm and side, you saw wounds, including that which
4 proved to be the fatal wound in his front, his neck
5 and his chest.

6 I suggest to you, ladies and gentlemen, that
7 an assault of that nature, with that many wounds
8 spread over that portion of the man's body, indi-
9 cates that the assailant knew exactly what he in-
10 tended to do, and that what he intended to do was
11 cause death.

12 There can be no other reason for a continued
13 assault of that nature, other than to cause death.

14 Dr. Clark indicated to you, and you can ex-
15 amine from the photographs when you deliberate in
16 the jury room, that the wound in the chest is the
17 one which actually caused death.

18 I suggest to you that the person who committed
19 the assault, in this case the defendant, Floyd
20 Morgan, continued to stab and strike at Saylor
21 until he inflicted a wound which he knew would
22 cause death; that very wound there.

23 It was mentioned to you, by Dr. Recchione
24 yesterday morning, that, when he looked at that
25 wound, he could see the man's heart. Dr. Clark

1 told you that that wound was approximately three
2 inches in depth or that it severed or came close
3 to severing the man's aorta. From that, you can
4 reasonably understand why the large quantity of
5 blood, that you saw in those photographs, was on
6 the floor and you can reasonably infer that that
7 wound was inflicted with the intended purpose of
8 causing death. There can be no other reason for
9 striking a man in that way.

10 I would suggest to you, and look at the photo-
11 graphs and see if they don't bear this out, that
12 the first assault occurred while the man was in bed.
13 You will see that, in the bed next to the body,
14 there is a large portion of blood on the sheets.
15 I suggest to you that those blows were ineffectual,
16 as far as causing death. What they did was awake
17 or disturb the man so that he began to resist or
18 attempted to fight back or try to struggle or ward
19 off this assault in some fashion.

20 I suggest that you can infer that from the
21 nature and number of wounds on his arm. It is my
22 suggestion that those are defensive wounds, wounds
23 he received while trying to defend himself.

24 Imagine, if you will, raising your arm to
25 try to ward off a blow, and you can see how those

1 stab wounds and slashes on the arm are inflicted.
2 Imagine then, as the man weakens through loss of
3 blood and from this assault, barely awake, that he
4 puts his arm down and the fatal wound in the chest
5 is inflicted, the wound to the throat or neck is
6 inflicted, and the other more shallow wounds are
7 inflicted to his chest.

8 It is my suggestion to you that that, in and
9 of itself, proves premeditation. Had the defend-
10 ant not intended to kill, he would not have con-
11 tinued this attack until those wounds were in-
12 flicted. Had he not intended to kill, had he in-
13 tended only to harm in some way or to threaten or
14 intimidate, there would have been no necessity,
15 no purpose beyond the infliction of the initial
16 wound and you would not have seen wounds of the
17 severity that you had described to you.

18 Premeditation is not something which needs
19 to exist - the instructions that the Court gives
20 you will mention this - for any specific length
21 of time. Premeditation may exist for a short
22 period of time or for a long period of time.

23 In this particular case, you can find premedi-
24 tation simply from the period of time where those
25 wounds were inflicted or, more importantly, you can